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**Fishery  
agreements in view  
of the South China  
Sea Conflict:**

A regional cooperative approach to maritime resource conflicts and territorial disputes

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## **ABSTRACT**

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Jurisdictional disputes in the South China Sea catchments area and the right to exploit the sea's resources are a potential source of conflict in this political highly sensitive region. On a daily basis, conflicts center on illegal, unreported and unregulated fishing operations in foreign territorial waters. As the sea's fish stocks are under great pressure, initiatives have been undertaken by the littoral states of the South China Sea to tackle the issue in cooperation. This research paper focuses on recent fishery agreements between China and other South China Sea states. On the background of these agreements and by further referring to international and regional agreements related to maritime resource management, I will investigate the potential and remaining challenges for further dispute settlement as well as underlying theories behind China's growing cooperative approach to the issue. In conclusion, I will give an outline to what extent a regional resource management regime for fisheries could contribute in the prevention of further conflicts.

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## Introduction

Marine affairs and the exploitation of marine resources have a long tradition in China. The areas around the major seaports of China have not only for a long time been the common way for foreign trade, but also the location where China's approach to reform and opening up took place and where the country's economic rise has started. However, as China shares all of its sea's with other nations, history has witnessed considerable sources of conflict over territorial waters, marine resources and unilateral state actions. The South China Sea is a semi-endorsed, marginal sea of about 3.5 million km<sup>2</sup>, bounded by a number of Asia's most populated and fastest growing nations.<sup>1</sup> Jurisdictional disputes and issues of sovereignty in the South China Sea and consequentially the rights to make use of the regions marine resources have long time impaired the relations between the People's Republic of China and other states bordering the South China Sea.

A major reason for continuing disputes is the phenomenon of illegal, unreported and unregulated fishing operations in the EEZ of other countries, putting fish stocks under enormous pressure what greatly influences food, and consequently, human security in the coastal zones of the sea. Fishery agreements and joint management of fishery resources can have considerable impact on finding solutions for the conflict. They not only require a number of institutional arrangements as the definition and allocation of property rights for fishing operations within defined boundaries but also close cooperation between rival claimants. Bilateral or multilateral inter-governmental cooperation with other coastal countries have become imperative for China to approach more efficient and sustainable marine living resource management strategies. Moreover, China's promotion of friendship with other countries in the region in form of agreements over shared resources and marine boundary delimitations can also be seen as a strategy to put an end to mistrust and suspicion within the region.

This research paper examines current initiatives for cooperation in form of fishery agreements and the establishment and management of joint fishing areas between China and its neighbouring countries in the South China Sea. I will evaluate in how far the principle of equity and mutual benefit in concern of marine living resources regardless of regional disputes over sovereignty is addressed. As a final objective, I will analyze in what sense fishery agreements in view of resource and border conflicts in the South China Sea

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<sup>1</sup> The South China Sea is bordered by the People's Republic of China, the Republic of China (Taiwan), the Philippines, Brunei, Malaysia, Singapore, Indonesia, Thailand, Cambodia and Vietnam

Region and the UNCLOS can be regarded as an indicator for further cooperation and contain a provision on maritime resource and boundary dispute settlement.

## **1. The background of the South China Sea conflict**

### **1.1 State sovereignty issues and resource conflicts**

Rival claimants among the littoral states of the South China Sea and the complexity of jurisdictional disputes have transformed the region into one of the most disputed areas in the world (Bateman et al. 2008). To realists in international relations, the South China Sea is mainly a strategic problem that involves conflicts of national interests among the claimant states that are geographically and geo-strategically associated with the non-resolution of drawing lines in the waters to demarcate sovereignty (Zha 2001). A number of about 200 smaller islands, atolls, submerged reefs and banks, most of them unsuitable for habitation, are located in the sea's catchments area. The different names the single coastal states have for the sea and its island groups reflect the variety of historical claims to hegemony in this maritime realm.

Besides territorial disputes, the South China Sea bears a high potential of resource conflicts from mineral to marine living resources. Growing demand, domestic environmental constraints and uncertainty about energy and mineral reserves has driven the search for natural resources into the ocean, heightening regional tensions unresolved maritime-boundary quarrels in this political highly sensitive region (Dokken 2001: 515). In addition to the valuable reserves of mineral resources, the South China Sea is of high environmental value. The region shows considerable habitat diversity such as coral reefs, sea grass beds and mangrove woodlands that are vital for a large diversity of marine species (Morton & Blackmore: 2001). Like the economic and ecological dimensions of the South China Sea problem, strategic considerations, mainly in form of international trade and military interests, centre on the region. The South China Sea is the second most used sea lane in the world, the most important thoroughfare from the Indian Ocean to the Pacific and a major transport route for oil, mostly from Gulf States to East Asia. In the centre of the conflict are the Spratly Islands which are not only of strategic importance but also considered to abound in various marine living and mineral resources, particularly hydrocarbon, oil and gas reserves are to be found there. The controversies about the insular feature of the Spratly Islands and the discussion about how to classify them in accordance with international law further complicate issues of maritime jurisdiction (Elferink 2001).

## 1.2 China's position and claims

The position of China in the region and world-wide in matters of geopolitics and international law relating to maritime issues has long time been far from certain (Zha 2001). China has the most extensive claims in the South China Sea and is involved in nearly all of the conflicts. China's claims in the South China Sea are founded on historical records and maps that uphold that first, China discovered the island groups in the South China Sea; and second, the islands have been occupied and developed by Chinese people first (Nguyen & Amer 2007: 307). Chinese maps published since 1953 have specified by a nine-dotted boundary line the Chinese territorial sphere and its "historic rights" of sovereignty over almost the entire body of the South China Sea (Li 2004).<sup>2</sup> However, it has been long time uncertain whether this line depicts China's maritime boundary or whether China claims to sovereignty only apply to the island groups and their adjacent waters and not the entire body within the line (Li 2004). If the Chinese claims refer only to the development of resources, negotiation over establishing a resource regime to solve the conflict seems to be more feasible; if, on the other hand, sovereignty issues are involved, finding solutions will be more complicated (Buszinsky 2003: 349).

A further point of debate concerning China's territorial claims in the South China Sea is the controversial definition of China's "historic rights or waters". According to the United Nations International Law of the Sea (UNCLOS), historic waters can be regarded as internal waters and imply that the rights of a state over these waters are exclusive. Claiming states can put restrictions on the navigation of foreign vessels within historic waters. Besides, international diplomacy acknowledges 'traditional' rights of local fishermen, which implies a step back from the legalistic approach to drawing lines as dictated by such regimes as the UNCLOS (Zha 2001). However, it was not until the 1970s that China launched major activities to establish a presence in the South China Sea and as foreign vessels have navigated freely in the region's waters for a long time, it has to be questioned to what extent China has made use of "its" exclusive rights and in what sense the rights can be justified to be "historic" (Zha 2001). Zou (2001) reasons that China's historic rights differ from traditional and generally accepted definitions in so far as China claims concentrate on activities for the development of natural resources. Nevertheless, the idea of seeing the South China Sea waters and its islands as lost territories those have to be won back persisted long time in the Chinese imagination (Buszinsky 2003). It was not until the end of the 1990s that the Chinese government has changed its attitude towards the affair and it became apparent that more weight was put on the sea's natural resources. The creation of Hainan Province that includes the Spratley, Paracel Islands and Macclesfield

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<sup>2</sup> The original 11-dotted line was changed to a nine-dotted line 1953 after the two-dotted line portion in the Gulf of Tonkin was deleted

Bank and their surrounding waters into its geographical boundary, was a declaration of the Chinese government to assert its claims to the natural resources in the South China Sea waters (Zha 2001: 580-581).

## **2. Marine fisheries in the South China Sea region**

### **2.1 Status of exploitation of marine fisheries in the South China Sea**

The South China Sea has long been famed for its abundant fishery resources that have strongly influenced the lifestyle of the people living along its coastal boundaries. The sea is not only a vital source of food but is a major component of the economy and foundation for employment for the majority of the population living along the coast of the South China Sea (Wang 2001). However, fish stocks are under pressure what greatly influences food, and consequently, human security in the coastal zones of the South China Sea (Dokken 2001). The sea is surrounded by Asia's most populous and fastest growing countries and negative impacts on its ecosystem, largely in form of pollution and marine habitat destruction, have increased rapidly during the last decades (Morton & Blackmore: 2001).

The most direct threat to fish stocks in the South China Sea is related to unsustainable fishing operations. In recent years, fish catch has rapidly increased and the fishing resources of the South China Sea have reached a critical stage. Fisheries are basically classified as renewable resources but every fish stock underlies a maximum sustainable yield and any increase in fishing efforts above this level will impair the self-regenerating capacity of the species. As many fish stocks in traditional fishing grounds in the coastal waters were used up faster than their rate of natural replenishment, states had to expand their fishing activities to waters outside their territorial borders to high seas fishing grounds. While less developed countries with little naval capacity mainly rely on extensive use of their resources in coastal waters, distant fishing countries like China conduct their fishing operations in the EEZ of other countries leading to the phenomena of illegal, unreported and unregulated fishing (IUU).<sup>3</sup> The struggle over fish stocks is further complicated by the fact that most species of commercial value are straddling stocks that migrate between the territorial waters of the single states or are highly migratory species that come from outside sea areas (Wang 2001). The reduction or collapse of important fishery populations, leading to high levels of conflict over remaining stocks, has driven numerous people out of the fishing industry and

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3 IUU involves among others non-compliance with seasonal fishing bans, fishing without proper permits, making use of illegal fishing gear and fishing methods, and catches above the total allowable catch

lead to rising unemployment in several rural areas and many of the region's pirates are believed to come from coastal fishing communities (Pomeroy et al. 2007).

The environmental interdependence between the states and the ecosystem of the South China Sea has long time been ignored. The conservation of the region's fishing resources is of common interest, though, given the overlapping claims and the highly political nature of the conflict, it has long time a minor place in the disputed arena. As the concentration remains on disputes over sovereignty, there is a general lack of qualified information and uncertainty on the sea's resources (Dokken 2001: 523). Trans-boundary marine scientific research efforts could be informative of the status of marine resources and give advice on fishery policies, however, marine research has long time only been carried out by single states or in cooperation with international environmental organizations such as the UNEP (Gomez 2001; Naess 2001).

## **2.2 China's domestic fisheries management**

China is by far the most noteworthy factor to consider in managing fishery resources of the South China Sea. Being the largest fishing state in the world, China has long time been criticised for its unsustainable, illegal fishing practices within and outside its territorial waters (Riddle 2006: 266). To alter this international reputation, the Chinese government has put many efforts in restructuring its domestic institutions for fisheries management and has launched a series of actions to control fishing capacity. The Ministry of Agriculture with its Fishery Department and the State Oceanic Administration (SOA) can be considered as the main organs in charge of fisheries management. China's Fisheries Law Enforcement Command (FLEC), which is subordinate to the Ministry of Agriculture, is Beijing's major enforcement tool for fisheries management. The China Marine Surveillance of the SOA is the competent institution for the implementation and enforcement of marine protection laws and regulations. The department's South China Sea Brigade directs military patrol operations in Chinese jurisdictional waters in the South China Sea to detect violations of Chinese laws and regulations, especially illegal fishing activities of foreign fishing vessels in China's waters.

According to Chinese law, any fishing operations in Chinese waters must be approved by Chinese authorities and be in accordance with Chinese law and regulations as well as with fishery agreements with relevant neighbouring countries (Zou 2002: 129). In order to engage in marine fishing activities, a vessel must get a fishing licence, inspection document and registration document prior to fishing. However, a first nationwide fishing vessel census in 2000 showed that 49% of the vessels lacked at least one of these certificates (Yu 2008). To control fishing stocks and guarantee sustainable development in the fishing industry, China has introduced several closed zones and seasonal bans on trawl fishing in the South China Sea for at least two summer months each year (Schreurs 2007: 127). As

fishermen who don't abide by the moratorium will be heavily fined, Chinese fishermen more or less tolerate to the seasonal fishing ban, whereas fishermen from neighbouring countries like Vietnam or the Philippines ignore the regulations, making the Chinese conservation strategies ineffective. The use of flags of convenience serves to exacerbate the problem. Fishing vessels must not necessarily be registered in their country of origin but can navigate under the flag of another state, and this loophole enables fishing companies to disobey international fishing and labour conventions with impunity (Pomeroy et al. 2007). When it comes to encounters between Chinese fishermen and maritime patrol forces of other South China Sea claimant countries, it becomes a diplomatic problem for China's Foreign Ministry to deal with (Zha 2001: 580). However, privately owned fishing vessels do not enjoy the same protection as state-owned ones and the common practice of the Chinese polity is that when Chinese individuals get caught in international disputes, interests of the nation-state enjoy priority over those of the individual. (Chan 1999 as cited in Zha 2001: 592).

## **2.3 Why a Regional Fishery Management Regime?**

Overexploitation of marine living resources is a problem of both science and governance (Zha 2001: 577). As the example of Chinese domestic efforts in fisheries management show, many unilateral measures stay inefficient in view of the South China Sea ecosystem as a whole. On the one hand institutional weakness and poor implementation of regulations at the domestic level impairs any regional effort for sustainable resource management, on the other hand, diverging national, regional and international interests lead to different objectives and outcomes. The controversies over jurisdictional boundaries in many parts of the South China Sea and consequentially the absence of property rights over maritime living resources has created the image of an open access resource pool. In this situation, no one takes efforts to preserve the resource at a sustainable level as others will free-ride and enjoy the benefits from the resources at the expense of the others that put restrictions on their own use of the resource. The consequence is that the resource will gradually be overexploited and in view of fisheries, face danger of extinction. Given the migratory nature of many species of the sea, no single country would be able to manage or conserve these fish stocks (Wang 2001: 539-540). Conservation and management issues within the territorial waters and the high sea areas must therefore be compatible with each other.

In view of the incongruities on regional level and trans-boundary problems like illegal fishing, pollution and piracy, cooperation is required in different areas. Several items were identified as most practicable for cooperation in the South China Sea, including: protection of the marine environment, marine scientific research; navigational safety; and marine resource management (Wang 2001: 543). Increasing cooperation in scientific cooperation



helps to develop a common understanding of the problem and provides an incentive for finding collective actions. In the case of trans-boundary environmental security matters, states never have been – nor will they ever become – fully sovereign (Dokken 2001: 524). Cooperation in the utilization of fishery resources is a feasible and practical way to start a regional cooperation regime. On the one hand, it circumvents issues of sovereignty; on the other hand it relies on long-term negotiations and cooperation so that mutual confidence will build among the affected parties. Furthermore, the arrangement of fishing zones and utilization of living resources has not much relevance to the utilization of non-living resources (Wang 2001: 539). The acceptance of certain norms may result in the exclusion of certain forceful or threatening destabilizing means of individual goal realization. Considerable efforts are needed in building a cooperative management regime to promote common interests in a defined sphere of influence (Bateman et al. 2008). Norms are an understanding of a situation. As long as fisheries are considered as free resources for all to exploit, fishermen will find the opportunity costs associated with venturing into the disputed waters to be low (Zha 2001: 594). In view of scarce resources, unrestrained competition increases the costs of obtaining access to resources. Norms may work for the benefit of dominant states as well, especially when security and economic concerns are involved (Buszinsky 2003).

### **3. Regional and international agreements on maritime resource conflicts**

#### **3.1. The United Nations Law on the Sea and Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement**

Regimes serve for the regulation of conflicting and cooperative relations. In view of maritime issues and disputes, the UNCLOS of the year 1982 is the most outstanding regime in the international arena and has become a universal code to govern the oceans and seas throughout the world. The Convention classifies the territorial sea and EEZ of contracting coastal states, provides coastal States with exclusive sovereign rights to explore, exploit, conserve and manage fisheries within 200 nautical miles, while protecting freedom of vessel navigation and aviation. Besides, it gives directives for the protection of fishery resources and the marine environment. Ratifying countries have to meet specific obligations e.g. with regard to pollution control, management of marine living resources or jurisdiction over their territorial sea and must adopt their own domestic legislations to the UNCLOS. All littoral states of the South China Sea signed and ratified the UNCLOS and have therefore committed themselves to the rational utilization and conservation of fishery resources (Huang et al. 2006).

According to the UNCLOS, coastal states must take measures, or cooperate with other states, regional and international organizations, in the interests of conservation and optimal exploitation of living resources of the high seas which remain outside national jurisdiction. Article 74(3) and Article 83(3) of the UNLOSC state that the parties concerned, in a common sense of understanding and cooperation, shall undertake every effort to enter into provisional arrangements of a practical nature. In case of a non-agreement, the parties still are obliged to restrain themselves from taking any action that would cause the dispute to deteriorate (Wang 2001). Under Article 123 of the LOSC all relevant parties should be invited to negotiations. The UNCLOS has not yet resolved ownership disputes in the South China Sea, however, multilateral, informal meetings have taken place annually since 1990 under the title 'Managing potential conflicts in the South China Sea'; second, an attempt has been made by the littoral countries of the region to establish an environmental action programme for the South China Sea (Naess 2001).

The UN Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement (UNFSA) is closely linked to the stipulations on maritime resource conflicts in the UNCLOS. The main objective of the UNFSA is to push states to cooperate to ensure conservation and optimum utilization of fisheries resources both within and beyond the exclusive economic zone. China as the world's major fishing nation has long time been reluctant to accept the need for a legally binding agreement on conserving and managing high seas fisheries. China signed the UNFSA but has not ratified it. However, some notable commitments and concrete reforms have been undertaken by Beijing to control and monitor its Distant Water Fishing fleet and to further enhance cooperation in international fisheries management (Riddle 2006: 288).

## **3.2 Regional Agreements**

### *3.2.1 China's agreements with neighbouring countries*

China's maritime claims in the South China Sea primarily conflict with those of Vietnam and the Philippines and any negotiation with one of the other claimant states might be affected by the claims of these two states and vice versa (Tonnesson 2003). And in view of bilateral negotiation with the Philippines, the role of Taiwan for any kind of successful conciliation cannot be undermined. The two touchstone issues that largely determine the scope of the Sino-Vietnamese and Sino-Philippine relationships are the territorial claims in the South China Sea and the Chinese effort to establish a strategic partnership for peace and security in Southeast Asia.

There is not direct agreement on joint fishery management between China and the Philippines, though, a current trend towards shelving territorial disputes and cooperating in the development of fishery resources can be interpreted into other agreements on resource

development. The Philippine-China bilateral agreement of August 1995 that followed the conflict over the Chinese military occupation of the Macclesfield Bank addressed more functional areas such as marine environmental protection, it can however be seen as the first mutual approach to pursue confidence building measures for dispute settlement. The agreement further demarked the beginning of the “new security concept” of the Chinese government promulgated in 1996 which should lay the future fundament for negotiations and dispute settlement.

China’s policy goal of “setting aside sovereignty disputes and jointly develop the resources” in the SCS expressed a fundamental shift in the Chinese South China Sea policy (Song 2005). In April 2001, China and Indonesia signed a memorandum to cooperate in fisheries fields regarding such matters as catch, processing, education followed by an agreement in 2004 on exploitation of the fisheries in the EEZ of Indonesia (Huang et al. 2006). In September 2004, Chinese and Philippine oil companies agreed on a joint exploration project of which Vietnam joint in 2005 (Goh & Simon 2008: 174). In 2004, Chinese and Philippine Ministries of Agriculture had in-depth discussion on fishing, sea water aquaculture, and aquatic product processing and reached a broad consensus on future cooperation in those fields by formally signing a Memorandum of Understanding on Fisheries Cooperation which was further intensified by the 2007 Memorandum on Broadening and Deepening Agriculture and Fisheries Cooperation.

### *3.2.2 Maritime boundary delimitation in the Gulf of Tonkin*

The first agreements between China and Vietnam over territorial boundaries and fishery resources in the Gulf of Tonkin also fall into the era of China’s new security and diplomacy concept. Fishery agreements between China and Vietnam have already existed in the past. However, it required the normalization of relations between China and Vietnam in the 1990s to facilitate the management of their conflicts. Before reaching an ultimate settlement of their maritime disputes, the two sides agreed to strive for maritime cooperation in areas such as fisheries (Nguyen & Amer 2007: 315). The Gulf of Tonkin has been in the centre of Sino-Vietnamese maritime disputes for many decades. The lack of agreements over the exploitation of the sea’s maritime living resources has caused many conflicts between Chinese and Vietnamese fishermen (Nguyen 2005). On 25 December 2000, China and Vietnam signed the Agreement on the Delimitation of the Territorial Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin together with an agreement on fishery cooperation to resolve their maritime boundary disputes in the area and to combat IUU fishing activities. As IUU is an every-day problem, access to fishery resources and the joint management of shared fish stocks were considered as the key issues in the negotiation process both in the interest of the two governments as well as in the interest of the many fishermen of the two countries (Zou 2005: 16).

The joint fishing ground in the agreed waters consists of the Common Fishery Zone (CFZ), the Transitory Fishery Zone, and a Buffer Zone that has been set up for small fishing boats to avoid disputes caused by illegal fishing activities by mistake of one party in the territorial waters of the other party. The two states are to undertake fisheries cooperation in the Agreed Water Area based on mutual respect for sovereignty, sovereign rights, and jurisdiction. The Sino-Vietnamese Joint Fishery Committee (JFC) guarantees that fishery cooperation will not affect issues of sovereignty over the respective territorial seas of China and Vietnam and other rights and interests enjoyed by the two countries in their respective EEZ. Fishing vessels which intend to operate in the CFZ need to apply for fishing permits from their competent authorities and have to be marked in accordance with the JCF regulations concerning fishing equipment, fishing methods, etc. These vessels are also obliged to comply with the regulations on preservation and management of fisheries resources set forth by the JCF. Each state, in accordance with its domestic law, has the right to impose punishment on fishing vessels that enter their waters in the CFZ without permission or that conduct illegal fishing activities.

China and Vietnam agreed to apply the principle of equality and mutual benefit in regard to marine living resources. On the basis of results from joint regular surveys on fishery resources, both sides will determine the allowable catch and quantity of operating fishing vessels. Each state is allowed to adopt any form of international cooperation or joint venture to carry out fishing activities within its own water area in the CFZ. Fishing vessels of a third party are required to have a permit to conduct fishing activities in the CFZ and are to comply with the regulations on preservation and management of fisheries resources laid down by the JCF. Whereas the management of living resources in the Gulf of Tonkin received much attention in the agreement, the approach of both sides towards maritime non-living resources was less enthusiastic (Zou 2005: 17).

The two Agreements in the Tonkin Gulf turn a new page in the history of defining sea boundaries and establishing fisheries cooperation in the South China Sea. It shows that the two states have the willingness to settle disputes left by the history of their bilateral relations (Nguyen 2005). As no solutions for the various maritime boundary disputes and conflicts upon maritime living resources between China and other South China Sea states have been found yet, the experience from setting up a cooperative resource management regime in the Gulf of Tonkin can serve China in future negotiations (Zou 2005: 19).

### *3.2.3 The ASEAN Declaration on the Conduct of Parties*

The ASEAN way of regime building is strongly based on the concepts of Asian multilateralism and sub-regionalism. The approach to the South China Sea issue as a regional problem favoured by most ASEAN states has long time been a regional approach. In the run-up to the negotiations of the 1992 ASEAN Declaration of the South China Sea, the ASEAN side openly expressed its desire for the joint development of the South China Sea's resources (Buszinksy 2003: 350). China has long time been successful in blocking all attempts to move the negotiations into the desired direction by insisting on bilateral approaches to the problem. It was not until the late 1990s when China for the first time revealed interest in negotiating the issue in a multilateral approach. In November 2002, ASEAN and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC). The Declaration was in two ways a milestone in the development of a regional approach to the disputes. On the one hand, the declaration marked ASEAN's first formal step in tackling the issue and on the other, it was the first time that China had accepted a multilateral agreement over the issue.

In the declaration, the parties restate their commitment to the rationales and principles of among others the 1982 UNCLOS, the Treaty of Amity and Cooperation in Southeast Asia, and the Five Principles of Peaceful Coexistence. The declaration is not of a prohibitive nature but aims to enforce self-restraint of the parties achieve a reduction of the tensions of the territorial and jurisdictional disputes in the South China Sea. The concerned parties are encouraged to maintain the present status quo of occupied positions and avoid any actions that complicate the situation. However, the Declaration contradicts with Article 123 of the UNCLOS as Taiwan as a relevant party has been excluded from the discussions on the DOC, mainly because of China's opposition (Song 2005).

As the DOC is not a legal instrument it is technically not legally binding and depends upon the behaviour and will of its parties. The code is therefore even less influential than many countries in the region had desired (Ngyuen 2003). In anticipation of a comprehensive and durable settlement of the conflicts, the parties concerned are encouraged to explore or undertake cooperative activities. However, it has to be noticed that most of the recommended items for co-operation fall in the category of "low politics" that include inter alia marine environmental protection and marine scientific research (Song 2005). In concern of fisheries, no direct provisions can be found in the document. The declaration was not assumed to solve territorial conflicts but represents an important contribution to the maintenance of peace and security in the region and to the endorsement of joint development and cooperation (Ngyuen 2003).

## **4. Issues of concern for regional and international relations**

### **4.1 China's economic pragmatism and environmental concerns**

China's goals have long time been to establish itself as the major power in East Asia and to legitimize its exclusive sovereignty over the South China Sea (Huntington as cited in Buszinsky 2003: 346). Decisive reasons for China not to continue pursuing its sovereignty claims in a more aggressive way is most likely that China did not look at the South China Sea in isolation and had the achievement of other goals in mind (Tonnesson 2003: 62). The expansion of economic growth and increasing access to the world's major export markets as a development priority, membership in the World Trade Organization and the expansion of China's economic relations with the ASEAN are some of the main reasons underlying Beijing's economic pragmatism.

A further concern is the growing dependence on maritime commerce and transport, communication of import goods, in particular natural energy resources through the region's sea lanes (Goh & Simon 2008: 174). China faces a high vulnerability towards any kind of disruption in these transport lanes, especially the Strait of Malacca and the influence of the U.S. in this strait. As a consequence, the improvement of the relations with Malaysia, Indonesia and Singapore is of great strategic importance. Moreover, there are other issues to consider as the sea's role for domestic and foreign tourism, and not to mention the significance to marine industries like sea salt engineering or marine biological medicines. Marine fishery industry, however, is given the main concern; in case of Hainan province, marine fishery industry even has highest priority in the province's economic development (Zhu 2001).

Besides the commercial interest in protecting the marine living resources of the South China Sea, the conservation of the marine ecosystem and its biological diversity has moved in the centre of debate as many international organizations are pushing forward numerous marine environmental protection and resource conservation strategies through cooperation among the single states rather than being solely focussed on national or bilateral debate (Rosenberg 2008). Most of the fish stocks in China's seas are fully exploited or even depleted and many coastal and inshore fishing grounds of high productivity have disappeared or moved far away from the nation's coastline (Yu 2008). Both the reliance on fishing industries and international influence on marine living resource management can become an imperative for China to approach more efficient marine resource management strategies leading to the establishment of a regional resource management regime.

## 4.2 Diplomacy interests

The relationship between the ASEAN states and China has long time been characterized by a common sense of fear of a too powerful China (Tilman as cited in Dokken 2001: 511). China's attitude towards the ASEAN in reverse has not been that different. China was often identified as the central diplomatic actor to have prevented a peaceful 'solution' to the South China Sea conflict (Zha 2001: 593). The moderation of China's behaviour towards its claims in the South China Sea and its flourishing diplomacy in Southeast Asia since the mid-1990s has moderated perceptions of China as a threat to the region (Goh & Simon 2008: 11). After the relaxation of the relations between the ASEAN and China, there was a growing hope that China will deliver important contributions to regional security rather than disturb it (Goh & Simon 2008: 112).

The parties of the South China Sea are committed to exploring ways for building trust and confidence according to the DOC. The Chinese shift from norm-defying to norm-affirming behaviour has to be regarded beyond regional dimensions (Buszynski 2003: 359). To balance the power and influence of the U.S. in the region and to prevent Japan from reasserting itself regionally, China had to avoid conflict with the USA and confrontation with the ASEAN states. Should China persist with its forward policy it will reinforce its neighbours' mistrust and misgivings towards China.

For China, the reunification with Taiwan is far more important than the South China Sea. China is worried about the risk of upgrading or, strengthening Taiwan's international status and its diplomatic relations with member states of the ASEAN (Song 2005). Conversely, the rising power and influence of China in international affairs in general and in the South China Sea area in particular might discourage member states of the ASEAN to take actions that confront the PRC's principle of "One China". Consequently, China has less reasons to apply the "One China" principle to the cross-strait relations and its foreign relations with member states of the ASEAN in such a rigid manner as it used to before (Song 2005: 278).

## 4.3 Security Concerns

Pragmatic interests are considered not to be sufficient to bring a process forward that often further requires the perception of a common threat to create a strong driving force for inter-state cooperation. There is a growing concern on the international level that scarcity of environmental resources will in future lead to armed conflicts or even resource wars over the control of major sources of water, mineral resources but also on potential oil and gas fields such as the South China Sea (Hyun & Schreurs 2007). Many analysts see the growing demand for oil and natural gas as main drivers in China's foreign policy (Dokken 2001; Buszynski 2003; Wang 2001). However, environmental interdependence and common interests in regional resource management can as well be a potential for

international integration and if environmental problems are closely associated with security issues, policy decision makers are more likely to place more priority on tackling these problems in cooperation (Dokken 2001). Still, a comprehensive security concept consists of more than political and military security and has to take into account the considerable economic, social and environmental dimensions of security. And as these are regularly interdependent and mutual influential systems, security concepts have to be brought in align with each other. Even if the environmental impact on security issues varies from state to state or region to region, it cannot be denied that there exists a strong environmental security link within the South China Sea.

In view of the common security concerns, China has strong aspirations to establish a closer military cooperation with ASEAN for both the reduction of U.S. influence in the region and the creation of a strategic buffer zone consisting of friendly or at least neutral neighbour states against potentially threatening great powers (Goh & Simon 2008: 173). Bringing the countries which were earlier perceived as potential or real threats and even as outright enemies, into the framework of regional cooperation, as developed by the ASEAN members, can be seen as an exercise in conflict management (Amer as cited in Dokken 2001: 525). Besides, it is assumed that major important threats to national security will be those coming from, or on, the seas and less from land what requires a shift of focus on maritime Southeast Asia (Goh & Simon 2008: 176). China has due to its dependence on seaborne trade and oil imports from the Middle East high interest in the security of the region has however undertaken little efforts to contribute to combating piracy or maritime terrorism in the region (Rosenberg 2008: 59).

In addition to the concerns of the littoral states of the South China Sea, the stability of the region is of vital importance for other states far removed geographically from the South China Sea. In view of the function as transport route, international user states like the U.S., Australia or Japan have a vested interest in maintaining both safe and secure shipping and freedom of navigation through the straits and sea-lanes of the South China Sea. Their priorities for maritime security, however, frequently differ from those of the littoral states that put more concern on issues related to national sovereignty or control of ocean resources such as fisheries than on maritime security (Rosenberg 2008).

#### **4.4 Prospects for further dispute settlement and persistent challenges**

The South China Sea exemplifies the convergence of traditional and non-traditional security issues and sources of conflict. Whereas factors that have facilitated or inhibited effective cooperation in the past are attached with less importance, concerns about future resource scarcity and maritime security are given more priority (Rosenberg 2008).



The ASEAN Declaration has to be considered as a starting point for further cooperation and regulation (Buszynski 2003). Powerful vested interests of domestic and international dimensions remain a challenge. China has still to be considered as the dominant power in the region and considerable inequalities in power will subsist without further commitments from the Chinese side. Whereas the relations have improved, concerns, in particular of economic nature and related to China's growing influence and dominance in the region, of the ASEAN states towards China remain (Goh & Simon 2008: 113-114). Despite ongoing commitments, China remains ambivalent, if not suspicious, of international organizations and remains vigilant against the incursion of foreign influence (Yu 2007). Chinese adherence to exclusive sovereignty will be the major obstacle for setting up a regional regime. According to Yu (2007), China still holds the position that there is no urgency to enter into multilateral negotiations unless the concerned parties have recognized China's historical rights over the territories and waters. In addition, China may feel that it has already made notable compromises such as allowing freedom of passage within the U-shaped line in the SCS. However, in 2009, a dedicated department has been set up in China to tackle land and maritime border disputes through peaceful means, sending a signal of the Chinese government for further cooperation.

The code of conduct does not provide a solution to the numerous complex conflicts in the South China Sea region and has more to be considered as a political statement by one major power and a regional association of minor states (Tonnesson 2003). Even though the disputes are of an evident multilateral nature, bilateral talks between pairs of claimant states may well pave the way to a regional solution. The Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin serves as a good example for the management of shared fish stocks and the possible establishment of confidence building measures in view of the contemporary regional security environment. China and Vietnam have made considerable progress in avoiding and managing possible sources of tension in recent years. However, there is a need to fully implement the agreements reached regarding the Tonkin Gulf. Even after ratification conflicts between fishing vessels in the Gulf of Tonkin continued to occur, leading each side to accuse the other of infringing the agreements (Storey 2008a). A maritime boundary cannot entirely protect a state's fishery resources from encroachment, thus, a proper management mechanism, subject to natural conditions, is necessary for the coastal states to keep stocks at sustainable levels. Besides, many challenges and discrepancies for exploiting resources without touching upon the issues of delimitation or sovereignty remain in other territorial waters, particularly those of the Paracel and Spratly Islands are likely to persist (Nguyen & Amer 2007: 315).

According to Wang (2001), fisheries cooperation can serve as a viable starting point from which the cooperation experience can spill over into other areas of cooperation. Current attempts to manage the areas in the South China Sea through joint fishing areas

and fisheries restrictions have only been affected in a few isolated areas. Though realistically, it would be very difficult to initiate any cooperation where political factors, such as military cooperation, come into play. Competition for scarce resources may indulge a struggle for power and the option to mutually destabilizing efforts to gain supremacy over others. From a realist theory perspective, China would gain greater benefits and power by unilateral actions and consequentially, the ASEAN states have to subordinate themselves to Chinese behaviour (Buszinsky 2003: 346). The demand for natural mineral and energy resources will certainly pose a future challenge to the issue.

## **Localizing the South China Sea problem**

On a daily basis, the South China Sea is a security threat first and foremost to the fishermen who rely on the its waters as a means of living and that therefore hold the key to sustainable resource management (Zha 2001). However, much attention is paid to the national level and to inter-state relations whereas dynamics on the local level seem to play a minor role. When fishermen in the South China Sea encounter the authority of maritime patrol forces dispatched by the various national governments to enforce their sovereignty claims, we have a societal problem. The conformist realist reliance on the nation-state as the unit of analysis, however, does not provide satisfying responses to such issues of 'human security' (Zha 2001). While questions over sovereignty and unclear boundaries are in general at the root of such conflicts, they are also an expression of competition for access to fishing grounds, in coastal waters as well as on the high seas. A centralized, command-and-control marine resource management approach and authority has not been efficient in resolving user conflicts over fisheries, thus, a close alliance between government and local stakeholders is a further pre-requisite for successful conflict management in the fisheries of the South China Sea (Rosenberg 2008; Pomeroy et al. 2007).

## **Conclusion**

The complexities that underlie fisheries depletion in the South China Sea are various and several national and regional efforts are needed to respond to this problem. The value a state gives to certain norms of behaviour, and its commitments to a balance of power are considered as a prerequisite to enter into negotiations (Buszinsky 2003). China's change of rhetoric and new ways of dealing with the issue give hope to a more efficient approach for joint resource management and the prevention of future conflicts. However, even if cooperative resource management regimes are successfully implemented, various other fields need to be addressed to ensure long-term sustainability of fishery management in the South China Sea. As fish know no national boundaries, the resolution of disputes over marine living resources in the absence of political agreements over the outstanding issues

of ownership or jurisdiction cannot be achieved without regional cooperation. China must not only harmonize its domestic law on marine affairs with other international conventions, but also strengthen its efforts in the conclusion of regional treaties. There are only a few bilateral and multilateral treaties relating to marine affairs, particularly with regard to marine resource management and environment protection, in the region. The South China Sea question is not only a preoccupation of the parties concerned but is of interest to the international community as a whole as it is economically, politically and environmentally significant to both the region and the rest of the world. The impact of the ocean on the worldwide environment is a global concern, and therefore more international cooperation is needed to approach ocean related problems. The need for environmental security and sustainable development of marine natural resources will have great influence on future cooperation in the South China Sea.

Despite positive developments, the remaining disputes are a challenge. The conflict is persistent since decades and recent attempts to approach more peaceful solutions let's assume a shift in a new direction of diplomacy and cooperation. However, in contrast to previous tensions and conflicts, environmental security issues in the South China Sea have in addition to be reflected upon as an internal threat. In view of growing demand of natural resources, especially in concern of oil and gas resources, it has to be questioned in what sense cooperative approaches guarantee long-lasting solutions or if the conflict will not even more aggravate and change from a more politically dominated nature to a mere resource conflict. Environmental security is quite a new concept in its formulation but many wars and conflicts in other regions of the world have their roots in conflicts over the access to natural resources. Even if issues of sovereignty are still the prevalent sources of debate, these have to be put into a different light when considering the growing demand for natural resources and how this will shape China's regional policy in the future.

An agreement on regional cooperation has to be considered as a long-term objective (Huang et al. 2006). With regard to the near future, one should not be too hopeful to head towards a final solution for the conflicts and the challenges to overcome should not be underestimated. Development priorities of nearly all of the states still focus on economic expansion as well as issues of sovereignty still prevail. The existing agreements in the region may not be an ultimate solution but help to facilitate the resolution of resource disputes in the South China Sea conflict and find new ways of dealing with each other. The combination of state, market and NGO programmes can serve as interim alternative or additional mechanisms to regional approaches (Rosenberg 2008: 74). However, in view of the various dimensions of the problems related to fisheries, the region lacks a true resource management coordinating body and common management principles that focus on sustainability. Despite historical conflicts and territorial disputes, the coastal countries of the South China Sea have good reasons to negotiate to avoid a "tragedy of the commons"

in their shared waters. Further cooperation is urgent; the question of scale, however, remains negotiable in the time being.

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